

**NEW BERN BOARD OF ADJUSTMENT  
MINUTES**

**August 26, 2013**

The New Bern Board of Adjustment held its regularly scheduled meeting on Monday, August 26, 2013 at 6:30 pm preceded by a 5:30 pm work session in the City Hall Courtroom, 2nd floor, 300 Pollock Street.

**Members Present:** Ms. Sarah Afflerbach – Chairman  
Mr. Peter Adolph  
Mr. Barry Evans  
Mr. Kenneth Brown  
Mr. Benjamin Beasley  
Ms. Renee Murphy  
Mr. John Murrell  
Ms. Beth Walker  
Mr. Peter Walker

**Members Excused:** Mr. David Herndon  
Ms. Lois Jamison  
Mr. Jeffrey Midgette  
Mr. Willie Newkirk, Sr.

**Members Absent:** None

**Staff Present:** Mr. Bernard George, Planning Division Manager

Chairman Sarah Afflerbach called the meeting to order.

Mr. Bernard George opened with a prayer.

Roll call was taken and a quorum declared.

**Minutes:** Reading of the minutes from the previous meeting was waived by unanimous consent. Minutes were approved with a motion by Mr. Barry Evans and seconded by Mr. Peter Adolph. Minutes were approved by unanimous vote of the Board.

Chairman Afflerbach congratulated and presented a certificate of appreciation in absentia to former board member Mr. Phil Urick for two years of outstanding service on the Board of Adjustment.

Chairman Afflerbach requested all those in attendance with intent to speak come forward to be sworn in. Two audience members and staff member Bernard George were sworn in.

Chairman Afflerbach asked if any board members had reason to declare a conflict of interest or ex parte communication with agenda items. None did.

**New Business:**

**A. Consideration of a variance application for relief of 1.8' from the minimum 35' front yard setback requirement for property located at 3115 Country Club Road. (Ward 3)**

**Staff Comments:** Mr. George provided an overview of this item to include a video of the property under discussion. Mr. George advised the original home located at the property was severely damaged in a storm and subsequently demolished and a new replacement home constructed. Upon completion of construction and attempting to get a final Certificate of Occupancy, the builder discovered the home was built 1.8 feet into the front yard setback. The home is currently at a front setback of 33.2 feet. Under R-15 zoning requirements, front yard setback is 35 feet, side yard is 15 feet, and rear yard is 25 feet.

During construction the builder ran into issues with the septic tank and drainage field located in the rear of the house. Consequently, some modifications from the original plan were required, which in turn contributed to the front yard setback encroachment.

Mr. George advised that the builder, Mr. Ryan Blizzard, was in attendance for this meeting to address the Board's questions and concerns. Mr. George further advised that the property has been posted as required by the Land Use Ordinance, Section 15-102 and property owners within 100 feet of the property have been notified, also as required by the Land Use Ordinance.

**Applicant Comments:** Mr. Ryan Blizzard provided a photograph of the property. Mr. Blizzard advised upon construction of the property, he believed the front setback to be 30 feet instead of 35 feet. This home was a first build for Mr. Blizzard. He advised the Health Department did come out to the property, located existing septic system and well, and provided approval on placement of the house.

He has talked with the neighbors and has had no complaints from them regarding the house placement and encroachment into the front setback. They are pleased with the appearance of the home and feel it has improved their neighborhood.

**Public Comments:** N/A

**Board Discussion:** Member Kenneth Brown voiced concern with the fact that the project is just coming before the board for consideration, after completion of the home. Mr. Brown felt that in the process of Mr. Blizzard obtaining permits to build the home, the setback information should have been discussed at that time, which would have alleviated the current setback issue.

Chairman Afflerbach asked if Mr. Blizzard was required to submit a site plan, which he advised he did submit.

Ms. Afflerbach referenced an after-the-fact survey that was included in the packet. Mr. Blizzard advised that footprint was what he presented to the permitting office for review

Ms. Afflerbach asked for confirmation that the project went through the City of New Bern Inspections Division. Mr. Blizzard confirmed it did. Ms. Afflerbach questioned if the Inspections Division required a site plan be submitted with the building permit application. Mr. Blizzard advised the Inspections Division did not require a surveyor to assess the property prior to construction. He provided them a plot layout of the house with a sketch that showed the location of the house.

Ms. Afflerbach questioned if Mr. Blizzard met with the Zoning Officer to discuss setbacks prior to beginning the construction. Mr. Blizzard advised he did not.

Mr. Barry Evans requested clarification of events involving the issuance of the building permit and the inspection from the Health Department. Mr. Blizzard advised he required permission from the Health Department to re-use the existing septic tank before he could apply for the building permit. The Health Department's requirement was the back of the new home could not exceed the footprint of the older, existing home. Therefore they began construction of the new home from the back footprint of the home and built forward.

Member Ms. Beth Walker verified an earlier statement that the house plan did not change from the one that was submitted to obtain a building permit. Mr. Blizzard stated that to be true. Ms. Walker again confirmed there were no changes in the footprint of the plan after the permit was issued. Mr. Blizzard advised there were no changes.

Mr. John Murrell asked if the original plan included the existing 14 foot garage. Mr. Blizzard advised that was the case. Mr. Murrow noted had the garage been 12 feet, there would not be an encroachment issue. Mr. Blizzard agreed.

Mr. Murrell questioned the length of septic drainage used in the backyard. Mr. Blizzard advised the existing septic and drainage system from the damaged home was kept, cleaned and re-used with the new construction.

Mr. PJ Walker asked if the applicant is aware of any opposition to the home. Mr. Blizzard advised he has had no complaints, rather has had numerous positive comments as well as outside purchase offers on the home.

Mr. Walker asked if the applicant had been aware of the setback requirements, what practical steps could have been taken to be within the setback requirements. Mr. Blizzard advised that had he known, they would have shortened the garage so as not to impede upon the setback requirements. Mr. Walker asked what he could do now to correct it, if necessary. Mr. Blizzard advised if the Board denies the variance request, he will have no choice but to tear the house

down, which would create a hardship for himself and the company he is operating.

Member Mr. Ben Beasley questioned when Mr. Blizzard was advised of the setback error. Mr. Blizzard advised upon issuance of the temporary Certificate of Occupancy, he was under the impression all was well. Upon the surveyors visit to the property to issue a final Certificate of Occupancy, the setback encroachment was discovered.

Ms. Walker advised she is familiar with the home under discussion, and was aware that the old home was completely destroyed by a large tree that fell on the house during a storm in June of 2012. Mr. Blizzard confirmed that, and advised the homeowners were in the audience as well and could attest to the trials they went through in losing their home one month prior to their wedding.

Mr. Blizzard noted he has learned a valuable lesson through this process and will ensure thorough review and inspections on all future projects.

Mr. Bernard George provided some background on the situation. He advised after a major storm there is a much abbreviated permitting process to allow displaced families to return to their homes as quickly as possible. He advised the understanding with the Building & Inspections Division was that this particular home would be built back within the same footprint of the damaged home. That's why a survey was not required at the time. Had it been a new home construction, a survey would have been done prior to construction.

Ms. Afflerbach advised typically a property survey, site layout, and setback requirements are always done prior to any construction, so it was a surprise to her that this wasn't done. Equally surprising was the applicant's explanation that the Health Department was consulted and sited the home. Mr. Blizzard advised the Health Department did not site the footprint, other than to advise due to the proximity to the septic system, the new construction could not impede beyond the original footprint of the damaged home.

Mr. Brown noted that perhaps in the future the City would need to reassess their handling of abbreviated permitting to ensure the guidelines are met. Ms. Afflerbach advised in her opinion the City is remiss in this case, as they did not ensure all areas were covered during this abbreviated process.

There being no additional questions for the applicant, Chair Afflerbach requested a motion to close the Public Comment portion.

**Motion** was made by Mr. Peter Adolph to close the public comment segment. Mr. Kenneth Brown seconded the motion. Motion unanimously passed.

**Factor Number One (1): Strict Adherence to the Ordinance Would Create Practical Difficulties or Unnecessary Hardships.**

Chairman Afflerbach advised the process by which to rectify this issue, dismantling an already completed house to gain required 1.8 feet, definitely creates a hardship for all parties involved.

Members Ben Beasley and Peter Adolph inquired as to the size difference between the old home and the new structure. Applicant Ryan Blizzard advised it is approximately 600 square feet larger with the garage. In addition, the new home was not placed on the old foundation, as it was cracked due to the damage from the tree.

Member Beth Walker advised even with the size increase, she does not feel it is out of place for the existing neighborhood, noting anyone driving by would not notice the size difference, nor notice a visual impairment with the encroached setback. Ms. Walker also noted she recognized the style of the new home is quite different from the old home it replaced, but it was built in such a way that she believed it to be on the same footprint as the old structure.

Member Kenneth Brown advised the neighborhood obviously doesn't see an issue with the new home as no one was in attendance to oppose it.

**Hardship is Not a Result of the Applicants Own Actions.**

Ms. Walker stated she felt that typically she would feel it was the result of the applicant's actions, but due to the special circumstances of the abbreviated permit process at the time reconstruction was to begin, she feels the builder was acting in good faith and didn't intentionally try to get away with something.

Chairman Afflerbach requested a motion based on the Findings of Fact just discussed; that the applicant was not required to provide a site plan to the City Building & Inspections department and therefore was making assumptions at the time of construction.

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**Motion** made by Mr. Kenneth Brown that the board accept the hardship due to the fact that the layout of the former house was removed, and during a disaster the city permitted things that wouldn't normally happen, to happen, and that allowed the mistake to be made.

Chairman Afflerbach requested additional verbiage be used stating a hardship would be created by having to repair, or make right, within the motion.

**Motion** made by Mr. Kenneth Brown that due to the fact that it would be a hardship to

the applicant, due to the fact that no blueprint was required by the city due to the storm that destroyed the home and it would be a hardship to go back and correct it at this time. Member Mr. PJ Walker seconded the motion.

Chairman Afflerbach requested Mr. George take in individual roll call.

Mr. George took a roll call. **Motion unanimously passed with a vote of nine (9) Yes's, and zero (0) No's.**

**Factor Number Two (2): Variance Would Be Consistent with the Intent and Purpose of the Ordinance (harmony with general purpose and intent of the Ordinance).**

Mr. Kenneth Brown advised he felt this topic was resolved with the fact no neighbors attended the meeting to show opposition for the structure.

Chairman Afflerbach reiterated when driving past the home, it does not stand out as an issue, or out of character with the surrounding homes.

Chairman Afflerbach requested a motion based on the Findings of Fact just discussed; that the new home is in harmony with surroundings and if granted would not appear to be out of place with what is required in the Ordinance.

**Motion** made by Ms. Beth Walker that the structure is in harmony with the neighborhood and in the intent of the Ordinance and preserves the spirit. Mr. John Murrell seconded the motion.

Chairman Afflerbach requested Mr. George take in individual roll call.

Mr. George took a roll call. **Motion unanimously passed with a vote of nine (9) Yes's, and zero (0) No's.**

**Factor Number Three (3): Variance Would Be Consistent with the Overall Public Welfare and Substantial Justice Will Be Done in Granting the Variance.**

Chairman Afflerbach advised if in appearance it was too close to the road, and surrounding residents were in attendance to voice concern, this may be an issue. But considering those points are not substantiated, there is no real issue.

The board agreed overall with the chairman's assessment.

Chairman Afflerbach requested a motion based on the Findings of Fact just discussed; that it was in conformity with the neighborhood and there would not be any public safety issues in granting the variance.

**Motion** made by Mr. Kenneth Brown that the board finds that it is not a threat to public safety, or welfare to the neighborhood, and the house improves the neighborhood the way it is. Ms. Renee Murphy seconded the motion.

Chairman Afflerbach requested Mr. George take an individual roll call.

Mr. George took a roll call. **Motion unanimously passed with a vote of nine (9) Yes's, and zero (0) No's.**

Mr. George suggested the Board take one final overall motion in granting the variance.

Chairman Afflerbach requested a motion to grant the variance.

**Motion** made by Mr. PJ Walker that due to the Findings of Fact the variance is granted. Member Mr. Ben Beasley seconded the motion.

Chairman Afflerbach requested Mr. George take in individual roll call.

Mr. George took a roll call. **Motion unanimously passed with a vote of nine (9) Yes's, and zero (0) No's. Variance is granted.**

**B. Consideration of a special use permit application to install a columbarium in a memorial garden at Centenary United Methodist Church located at 309 New Street. (Ward 1)**

Member Mr. Peter Adolph noted that he was familiar with this issue due to its being presented before the Historic Preservation Commission while he was a Commissioner, therefore was unsure if disclosure was required. Chairman Afflerbach advised she felt if Mr. Adolph was to have any type of financial gain or conflict from this item, then he would need to recuse himself. But as Mr. Adolph noted, he does not, therefore it is not necessary for him to be excused from the discussion.

**Staff Comments:** Mr. George provided an overview of the project. Mr. George advised this is a memorial site for cremated ashes. There are plans to create a memorial garden on the site. The Historic Preservation Commission reviewed this project at its June 19, 2013 meeting at which time they approved and granted a Certificate of Appropriateness. The City's Departmental Site Plan Review Committee reviewed this project at its July 26, 2013 meeting where staff approved the plans for this as well.

Mr. George advised that the Project Director was in attendance and would be available to answer questions later. Mr. George provided a video of the site and location of the proposed Memorial Garden. Citing the plans provided to the board he cited there will be two walls, one along the portico and one along the sidewalk. The area will be re-landscaped as well.

Mr. George advised the site has been posted for notice of tonight's meeting as well as adjacent property owners within 100 feet of the site were also noticed. The zoning for this area is R-10, Residential. He also noted cemeteries are required to have a Special Use Permit, which is why the application is being considered by the board tonight.

Mr. George advised that staff did find the application to be complete and recommends approval of the application.

Mr. PJ Walker asked for verification that the project is being built specifically to hold cremated remains and that is all; no grave sites. Mr. George did verify this to be fact.

**Applicant Comment:** The applicant advised there would be two memorial walls erected that would hold 140 niches and double niches. A retaining wall would be built as well that will border the sidewalk. He discussed the plan as presented on the site plan. There will be a 43" tall (wall will be 40" with a 3" cap) brick retaining wall bordering the entire area, which will match existing retaining walls. There is an existing granite curbing that currently runs down the sidewalk of New Street, which he advised the HPC required not be affected. Therefore the proposed retaining walls would be built 6" behind the granite curbing. It is out of plumb and will require leveling.

By the Education Building which is located on New Street, there is an existing wall that is identical to what they are proposing to build. The height will also match the majority of the existing wall.

There will be a built-in cross-shaped sidewalk that will be created with brick pavers to match the existing sidewalk.

The proposed memorial wall being built by the breezeway will be 2' x 10'. The other proposed wall will be approximately 3' x 10'.

The applicant advised some topsoil will be brought in to provide proper drainage. Japanese Maples will be planted as well as Knock-out roses. Two existing, overgrown azalea bushes will be removed.

Ms. Walker questioned the tallest built structure will be 43", with nothing taller than that. The applicant verified that to be correct.

Mr. Kenneth Brown questioned how the ashes will be held within the wall. The applicant advised the niches are essentially a concrete vault that goes within the wall that will hold the ashes. Each niche will have a granite plate engraved with the person's name. The sidewalk will be the same design.

Chairman Afflerbach verified each niche is a contained unit and will eliminate any contamination issues. The applicant stated that to be truth. She questioned if there was a

requirement to have a professional installer to ensure no contamination occurs. The applicant advised he was not aware of the need for this. The company is a nationally reputable company.

Ms. Renee Murphy reiterated the ashes will not be visible from the street, that the ashes are actually contained inside the walls. Member Mr. Adolph confirmed this to be true.

The applicant also advised that, as verified by the HPC, there will not be any flowers placed about these walls.

Mr. Kenneth Brown asked what the cost for one of these would be. The entire job cost initial estimate was \$98,000. The budget has gone up to just over \$100,000 for the entire job.

Mr. PJ Walker advised his documentation notes a total of 155 niches. The applicant advised that was the initial hope, but there was no way to accommodate all of those in the proposed structure, so a total of 137 niches were agreed upon. That will be the maximum amount. Mr. Walker noted that if there were future plans to expand this project, another special use permit would be required.

Mr. George advised a substantial expansion of this would require another special use permit. Chairman Afflerbach felt based upon the rules that would be the case. The applicant advised in his opinion if another 100 niches was proposed then he assumes another special use permit would be required. As it currently stands, if they are able to fit in between 3-7 more niches, they will do that under the assumption another special use permit would not be required, especially considering the original amount of niches to be considered was 155.

Mr. Beasley questioned if that should be included in the original permit so the applicant would not be liable nor required to get an additional permit.

Chairman Afflerbach advised any alterations to the plans that are submitted to the Building & Inspections Department would require an additional HPC application and review as well. Therefore whatever the applicant is presenting to the Board of Adjustment, and already presented to the HPC is what should be constructed.

Mr. George advised the dimensions of the walls will not change, but the number of niches created, if possible, may increase. Mr. George suggested the board put a cap on the number of niches to be constructed to ensure there is no future issue.

Ms. Walker asked if the HPC approved the proposed 155 niches, which the applicant advised they did. Ms. Walker then noted she feels comfortable approving the 155 niches as proposed would be a good way to cap the number of niches built.

Ms. Walker reiterated with the applicant that there is a columbarium at an adjacent church, so there is already a precedent of acceptance set. Chairman Afflerbach also noted this area, while zoned residential, is not very residential immediately surrounding the church.

Chairman Afflerbach noted for the record there was no public in attendance to comment.

**Board Discussion:** Chairman Afflerbach asked if all board members were comfortable moving ahead with motions, or if additional discussion was needed. The board decided as a whole that no further discussion was necessary.

**Factor Number One (1): Requested Permit is Within the Jurisdiction According to the Table of Permissible Uses.**

Mr. Peter Adolph questioned if there was anything in the Ordinance that deals with this subject. Chairman Afflerbach advised there was, and the reason this application was brought before the Board was within the Table of Permissible Uses there is a requirement for a Special Use Permit. It is an allowed use, with a Special Use Permit, which is what this board was attempting to satisfy at this meeting.

Chairman Afflerbach advised he first item is within the Table of Permissible Uses, which could be a Fact Found, as well as referencing Section 15-146 of the Land Use Ordinance.

**Motion** made by Ms. Beth Walker that the board grant the permit due to the fact this is a Permissible Use with a Special Use Permit. Motion was seconded by Mr. Kenneth Brown. Chairman Afflerbach requested Mr. George take an individual roll call. Mr. George took a roll call. **Motion unanimously passed with a vote of nine (9) Yes's, and zero (0) No's.**

**Factor Number Two (2): The Application is Complete**

Chairman Afflerbach advised Mr. George testified to in his comments the application is complete, and suggested a motion be made if the board members also round this to be true.

**Motion** made by Mr. PJ Walker that the application is complete as presented. Motion was seconded by Mr. Barry Evans. Chairman Afflerbach requested Mr. George take an individual roll call. Mr. George took a roll call. **Motion unanimously passed with a vote of nine (9) Yes's, and zero (0) No's.**

**Factor Number Three: If Completed as Proposed in the Application, the Development Will Comply With All the Requirements of This Ordinance.**

Chairman Afflerbach advised the requirements of this Ordinance being the Land Use Ordinance was determined at a large extent by the Historic Preservation Commission. There were meetings with the City, in which a landscaping plan was produced. This application was also reviewed within the Department Review requirements, all of which documentation has been provided in each members packet.

**Motion** made by Mr. Peter Adolph that development will comply with all of the

requirements of the Ordinance if completed as proposed. Mr. Kenneth brown seconded the motion. Chairman Afflerbach requested Mr. George take an individual roll call. Mr. George took a roll call. **Motion unanimously passed with a vote of nine (9) Yes's, and zero (0) No's.**

**Factor Number Four (4): The Use Will Not Materially Endanger the Public Health or Safety if Located Where Proposed and Developed According to the Plan as Submitted and Approved.**

Chairman Afflerbach reiterated as previously discussed, that while the Zoning of this area is Residential, there are no residences immediately adjacent to the proposed location. She advised construction of the columbarium was discussed with no concerns of contamination.

**Motion** made by Mr. PJ Walker that the fact indicate that the permit will not materially endanger the public health or safety as proposed. Member Mr. Ben Beasley seconded the motion.

Chairman Afflerbach asked Mr. Walker if he would like to include any of the discussed facts as a Finding of Fact within his motion, to provide more specific information.

**Motion** made by Mr. PJ Walker that the facts as presented by the applicant regarding the placement and construction in the area do not appear to endanger the public health or safety. Mr. Ben Beasley seconded the motion. Chairman Afflerbach required Mr. George take an individual roll call. Mr. George took a roll call. **Motion unanimously passed with a vote of nine (9) Yes's, and zero (0) No's.**

**Factor Number Five (5): The Use Will Not Substantially Reduce the Value of Adjoining or Abutting Properties or the Use is a Public Necessity.**

**Motion** made by Ms. Beth Walker that based on the fact there is no public opposition to this project, it will not reduce the value of adjoining or abutting properties. Ms. Renee Murphy seconded the motion. Chairman Afflerbach requested Mr. George take an individual roll call. Mr. George took a roll call. **Motion unanimously passed with a vote of nine (9) Yes's, and zero (0) No's.**

**Factor Number Six (6): The Location and Character of the Use, if Developed According to the Plan as Submitted and Approved Will Be in Harmony With the Area in Which it is to Be Located and in General Conformity with the Plan of the Development of the City.**

Chairman Afflerbach advised this plan has been discussed and approved through the Historic Preservation Commission and there are no opponents in attendance during the meeting tonight. Ms. Walker advised that as presented, the same materials would be used as the church, as well as the same plantings that are already in existence, that it will be harmonious with the environment.

**Motion** made by Ms. Beth Walker that is developed according to the presented plan it will be in harmony with the area. Mr. Peter Adolph seconded the motion. Chairman Afflerbach requested Mr. George take an individual roll call. Mr. George took a roll call. **Motion unanimously passed with a vote of nine (9) Yes's, and zero (0) No's.**

Chairman Afflerbach requested a motion to grant the Special Use Permit.

**Motion** made by Mr. Kenneth Brown to grant the Special Use Permit due to fact that all criteria have been met by the Board and the City. Mr. PJ Walker seconded the motion.

Chairman Afflerbach requested Mr. George take an individual roll call.

Mr. George took a roll call. **Motion unanimously passed with a vote of nine (9) Yes's, and zero (0) No's. Variance is granted.**

### **C. Appointment of a nominating committee**

Chairman Afflerbach questioned if this topic was discussed at the last meeting in which she was not in attendance. Mr. Kenneth Brown advised a three-person committee had been determined but a report had not been provided.

Ms. Beth Walker advised she and the other two committee members have not had an opportunity to meet and therefore she does not have anything to report.

Mr. Kenneth Brown questioned if any of the three committee members would complete their term. Mr. Bernard George advised they would not. Ms. Walker advised that information would be helpful in making decisions. Mr. George advised all current members have been reappointed. No one will be coming off the board until June 30, 2014. Mr. Brown questioned why the board couldn't make a decision during this meeting, noting he feels the current chairman is doing a good job. Mr. Barry Evans seconded that opinion. Mr. Peter Adolph questioned what positions are to be nominated. Mr. George advised the chairman and vice-chairman positions are the two that are voted upon. Ms. Walker asked if Mr. Evans has enjoyed being vice-chairman. Mr. Evans noted he has, time permitting, but suggested Ms. Walker would make an excellent vice-chairman. Mr. Brown, Ms. Murphy and Chairman Afflerbach all agreed.

**Motion** made by Ms. Renee Murphy to nominate Ms. Beth Walker as the vice-chairman of the Board of Adjustment, and current chairman, Ms. Sarah Afflerbach, to continue as the Board Chair. Mr. Kenneth Brown seconded the motion. Board members voted unanimously.

With no further discussion, meeting adjourned.

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Sarah Afflerbach, Chairman

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Bernard George, AICP, Secretary